**THE HON'BLE MR JUSTICE V.V.S.RAO**

WRIT PETITION NO.21535 of 1999

Dated: 14-07-2006

Between:

K. Vikram.

**..... PETITIONER**

AND

NTR University of Health Sciences,
rep. by its Registrar, Gunadala, Vijayawada.

**.....RESPONDENT**

**THE HON'BLE SRI JUSTICE V.V.S. RAO**

WRIT PETITION NO.21535 of 1999

ORDER:

The petitioner filed the instant writ petition seeking a writ of Mandamus declaring the action of the respondent, namely, NTR University of Health Sciences (UHS), Gunadala, Vijayawada, in reducing the aggregate marks of the petitioner from 177 to 150 in Obstetrics/Gynaecology as illegal and arbitrary, and for a further direction to the respondent to issue revised memorandum of marks by duly changing the marks from 150 to 177 in the said subject.

The brief fact of the matter is not in dispute. The petitioner appeared for final year MBBS (Part-II) in April/May 1998. He was declared as passed in medicine and surgery as he got 230 out of 400 and 246 out of 400 in the subjects respectively. Though he got 177 marks in Obstetrics/Gynaecology, he was declared as failed, as he could not get the minimum marks in clinicals/practicals. As per the UHS Regulations then in force, a person was required to get minimum 25 marks in clinicals but the petitioner got only 19 marks. Therefore, he was declared as failed in the said subject. It appears that the University later decided to award up to 10 grace marks basing on the need in case of a student who failed in one paper of MBBS (Part-II) examinations. As per the said decision, the petitioner was awarded six grace marks in clinicals, by which he did not fell short of obtaining 25 marks out of 50 marks. Accordingly he was declared as passed and a revised memorandum of marks bearing certificate No.985051189 dated 30-06-1998 was issued to him showing him as passed but instead of showing 177 + 6 i.e., 183 marks in Obstetrics/Gynaecology, in the marks memo, it was shown that he got 150 marks (the minimum out of 300) for a pass.

In the counter-affidavit filed by the Registrar of UHS, it is stated that grace marks are awarded to the candidate as per the eligibility and whenever grace marks are awarded, the additional marks are limited to the minimum required for pass and by reducing aggregate marks to the minimum for pass. Accordingly as per the discretion of the Vice Chancellor, grace marks were awarded to the petitioner to enable him to get through the examination duly reducing aggregate marks to 150.

The matter was heard at least on three occasions. On 05-07-2006 the learned standing counsel for UHS brought to the notice of this Court that the revised marks memorandum was issued to the petitioner

showing minimum pass marks in Gynaecology as per the resolution of the Academic Senate. As the said resolution is not available on record, this Court directed the learned standing counsel to produce a copy of the resolution along with the supporting material. Today, the learned standing counsel has placed before this Court, a copy of the Minutes of the meeting of the Executive Council held on 29-07-1998 along with the information regarding the action taken by the University in awarding grace marks for MBBS (Part-II) Examinations on April, 1998. The said information reads as under.

> INFORMATION REGARDING ACTION TAKEN BY THE UNIVERSITY IN AWARDING GRACE MARKS FOR THE FINAL MBBS PART-II EXAMINATIONS OF APRIL 1998.
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> The April 1998 examinations of final MBBS Part-II theory and practicals were commenced from 17-04-1998 and 11-05-1998 onwards respectively and were completed in all Medical Colleges.
>
> During and after conducting of examinations there were several telegrams and complaint letters from unidentified sources and representations from the students parents casting allegations on internal as well as external examiners of Part-II subjects. Specifically internal and external examiners of Department of Medicine of Andhra Medical College, Visakhapatnam and internal examiner of Obst. & Gynaec. S.V Medical College, Tirupati are demanding money for passing the candidates (representations enclosed as Annexure-I).
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> A news report has also appeared in Eenadu on 16-06-1998 stating that the Professor of Andhra Medical College have resorted to malpractices and corruption while conducting clinical and practical examinations for final MBBS (copy enclosed as
> Annexure-II).
>
> A few representations were also received from the students and student associations requesting to increase the grace to 10 marks, as this year final papers have been tougher than usual (copy enclosed as Annexure-III).
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> With regard to award of grace marks the following are regulations of University.
>
> Theory 40%
> Practical / clinical (including records if any) 50%
> Total of theory, 50%
> Practical / clinicals (including records and orals)
>
> In view of the representations received from the students and from unknown persons the results of final year MBBS examinations of AMC, Visakhapatnam was placed before the Executive Council for information. In addition the results of final MBBS of all other colleges are also placed for

> comparison as well as the results of first and second MBBS examinations of all the colleges in the State and also a comparative statement showing the percentage of results in each of the subject of the colleges in the State over a period of four years (1995-98) was placed before the council in the meeting held on 26-06-1998 for decision regarding further course of action (copies enclose as Annexure-IV).
>
> In the meeting held on 26-06-1998, the Council resolved "to add grace marks upto 5 in theory/practical/clinical/oral or split as per the need in one subject only provided the candidate is completing the course/part and passed in all other subject of the course/part, further to scrutinize itemized analysis of theory/practical/oral parts for each center of each subject and compare them with previous performance of the candidates. Necessary data may be placed before the next meeting of the Council and Council perused all aspects of the issue and resolved to release the results without prejudice to any action.

The resolution passed by the Executive Council, presumably following the decision of the Academic Senate to add grace marks in theory/practical as per the need in one subject only, reads as under.

> Resolved to add grace marks upto 5 in theory/practical/clinical/oral/or split as per the need in one subject only provided the candidate is completing the course/part and passed in all other subjects of the course/part.

A plain reading of the above resolution would show that grace marks can be added to a failed candidate subject to condition that the candidate must be completing the Course/Part and must have passed in all the other subjects of the Course/Part. In such event alone grace marks can be added. Relying on the said resolution, the learned standing counsel vehemently contends that when the grace marks are added to one subject in which the candidate failed, if the minimum aggregate marks are not reduced to minimum pass mark, it would allow a failed candidate to march over a meritorious candidate, who passed all papers in one attempt.

The submission made by the learned standing counsel is misconceived. It is the case of the University that the petitioner was issued the revised marks memorandum reducing to the minimum pass marks i.e., 150 as he was awarded grace marks, based on the resolution of the Executive Council/Academic Senate. As seen from the above, the Academic Senate or Executive Council never intended to reduce to minimum pass marks whenever the grace marks are added to the candidate. Such being the case, the question whether it

is competent to the University to reduce to minimum pass marks in the event of adding grace marks does not arise at all. There is no denial that all academic decisions are taken by the Academic Senate, which are approved or confirmed by the Executive Council and all such decisions are binding on all authorities and officers of the University. When the resolution passed by the Executive Council on 26-06-1998 does not contemplate reduction of aggregate marks to minimum pass marks, the issue of revised marks memorandum reducing 177 marks obtained by the petitioner to 150 is illegal and arbitrary.

The writ petition, for the above reasons, is accordingly allowed and the respondent is directed to issue revised marks memorandum to petitioner showing the total aggregate marks obtained in Obstetrics/Gynaecology without any reduction. It is made clear that by reason of such issue of revised marks memorandum, the petitioner will not get any additional benefit as a meritorious candidate. No costs.

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(**V.V.S.RAO, J**)

14th July, 2006
ghn